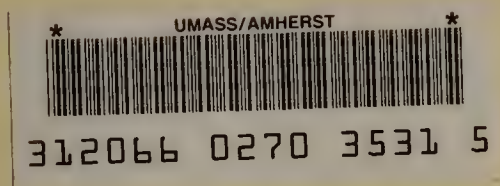


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*COMMONWEALTH
OF MASSACHUSETTS*

Office of Consumer Affairs and Business Regulation

HOME IMPROVEMENT CONTRACTOR
ARBITRATION PROGRAM

PROCEDURAL HANDBOOK

Updated June 2000

This booklet also includes a copy of the statute and regulations governing the program:

201 CMR 14.00

M.G.L. c. 142A

In 1992, the Home Improvement Contractor Law (M.G.L. c. 142A) was created to protect consumers and to regulate the practices of home improvement contractors.

The law establishes a contractor registration requirement, an arbitration program for resolving disputes between homeowners and registered contractors and creates a Guaranty Fund to compensate consumers up to \$10,000 for unpaid judgments against home improvement contractors.

This handbook reviews the procedures for the operation of the arbitration program created by the Home Improvement Contractor Law (M.G.L. c. 142A, §4). It includes a summary of the arbitration procedures outlined in 201 CMR 14.00. Parties should not rely exclusively on the summary; all parties should review the arbitration regulations in 201 CMR 14.00. A copy of the regulations are included in this booklet.

The arbitration program is designed to promote the speedy, efficient and fair disposition of disputes arising out of the improvement of an owner-occupied, one-to-four family residential home by a registered contractor or subcontractor. It applies to home improvement transactions with a written contract between a homeowner and a contractor or subcontractor registered with the Board of Building Regulations and Standards occurring on or after July 1, 1992.

Effective May 13, 2000, the Office of Consumer Affairs and Business Regulation will provide the daily administrative services for the program, and will serve as the "arbitration firm."

Questions about these procedures should be directed to the Home Improvement Contractor Program Coordinator at the Office of Consumer Affairs and Business Regulation:

One Ashburton Place
Room 1411
Boston, MA 02108
(617) 727-7755

The parties and their representatives are to have no direct communication with the arbitrator outside of the hearing.



SCREENING ARBITRATION REQUESTS

ELIGIBILITY REQUIREMENTS

The Office of Consumer Affairs and Business Regulation will review *Requests for Arbitration* for technical acceptability.

Homeowners may submit a *Request for Arbitration* only if the contractor was registered with the Board of Building Regulations and Standards on the date of the contract with the homeowner. Under M.G.L. c. 142A, all registered contractors and subcontractors who enter into contracts for residential contracting impliedly consent to arbitration.

Contractors may submit a *Request for Arbitration* only if the parties' written agreement contains an arbitration clause that is signed by the homeowner, and the contractor was registered with the Board of Building Regulations and Standards on the date of the contract with the homeowner.

Either party may file a *Counterclaim* in response to a *Request for Arbitration* that has been filed and accepted.

To be accepted for arbitration, the *Request for Arbitration* also must meet the following technical qualifications:

1. There must be a written contract for the residential contracting work, and that contract must be submitted with the *Request for Arbitration*.
 - The program does not arbitrate disputes for which there is no written contract, even if the amount of the contract is below that (\$1,000) for which the law requires a written contract.
 - If there are unwritten modifications to the initial written contract, the case may proceed to arbitration if all other requirements are met.
2. The contractor was registered with the Board of Building Regulations and Standards on the date of the contract with the homeowner.
 - The contract date is the latest date on which both parties had signed the contract.
 - In the absence of a homeowner signature, the contract date is the date of the first payment.
 - A case is disqualified even if the contractor was required by the statute to be registered, but was not.
3. The contract was for improvements, repairs, renovations, alteration, or additions to a pre-existing 1-4 unit residence.
 - This program does not cover new construction.
 - Condominium units located in buildings of more than 4 units do not qualify for arbitration.

4. The property or residence at issue is in Massachusetts and is owner-occupied as a primary residence.
 - A condominium association does not qualify as an owner.
 - If the contracted work at issue prevented a homeowner from occupying the residence, the parties may still have access to the program.
5. The *Request for Arbitration* must be on a completed form approved by the OCABR, and received within 2 years of the contract date.
 - This deadline may be tolled in those instances where the parties entered into formal mediation proceedings.

The *Request for Arbitration* qualifies for acceptance based upon the filing party's assertions, which then must be proved in arbitration.

PROCESSING OF REQUESTS FOR ARBITRATION

Generally, the Office of Consumer Affairs and Business Regulation (OCABR) will review the submitted *Request for Arbitration* within two weeks of receipt.

Incomplete Forms: These forms will be returned to the Claimant for completion. Completed forms must be received within thirty days or within the Claimant's period of eligibility for filing the request, whichever is later. The OCABR may reject a request that is not filed by the appropriate deadline.

Ineligible Requests: *Requests* that do not meet the basic criteria of the law will be rejected. The Claimant will receive a notice from the OCABR indicating the reason that the *Request* is ineligible.

Eligible Requests: The OCABR will notify both parties that the *Request for Arbitration* meets the minimum criteria for the program, and will inform the parties of the arbitrator appointed for the case. Both parties must submit the Conflict Checklist within 10 days.

Assuming the parties have no conflict with the arbitrator, the OCABR will send a notice to the parties that the case has been accepted. The Claimant then must pay the applicable fee within 10 days.

Counterclaims: The Respondent may file a *Counterclaim* within 10 days after notice that the filing party's *Request of Arbitration* has been accepted. The arbitrator may grant a party one 7-day extension to respond to a *Request for Arbitration* or to a *Counterclaim*. (Additional extensions may only be granted upon a showing of extraordinary circumstances.) The party filing a *Counterclaim* must pay a fee in accordance with the fee schedule. The fee is due when the *Counterclaim* is filed. Additional claims and amendments may not be submitted without permission from the arbitrator, and no new or different claim may be submitted once the time for filing has expired.

Timeline for Processing Requests for Arbitration

REVIEW AND ARBITRATOR APPOINTMENT PERIOD:

Before the case is accepted, Day 1:

- The OCABR receives a *Request for Arbitration*.

Before the case is accepted, by Day 14:

- Within two weeks, the OCABR notifies the parties if the *Request* meets the basic qualifications, and informs the parties of the arbitrator appointed for the case.

Before the case is accepted, by Day 24:

- Both parties must submit a Conflict Checklist within 10 days after the parties are notified that a *Request* meets the minimum criteria.

ARBITRATION PERIOD:

Day One:

- The OCABR notifies both parties that the *Request for Arbitration* has been accepted, triggering the 60-day period in which the hearing should be held and all evidence should be presented

Day Ten:

- The Claimant must pay the filing fee within 10 days after being notified that a *Request* has been accepted.
- If the Respondent chooses to file a *Counterclaim*, it must be filed no later than 10 days after the parties are notified that a *Request* has been accepted.

Day Sixty:

- All evidence has been presented to the arbitrator.

Day Seventy-Four:

- The arbitrator renders a decision.

Please note that the fee process has been changed since the regulations were enacted, and the arbitration fee is not due until after the arbitrator has been appointed.

THE ARBITRATOR

Upon the determination that a *Request for Arbitration* meets the basic qualifications of the law, the Office of Consumer Affairs and Business Regulation (OCABR) will appoint an arbitrator.

SINGLE ARBITRATOR:

A single arbitrator will conduct each hearing.

APPROVAL OF ARBITRATOR:

Arbitrators are chosen by the OCABR from a pool of specially trained arbitrators. The arbitrators are experienced professionals with expertise in the construction field. The choice of the arbitrator is not subject to the approval of either party. However, if the arbitrator is currently, or has been in the past, a contractor or a subcontractor, or if the arbitrator has been the Claimant or Respondent for any action pursuant to M.G.L. c. 142A, she or he must disclose that fact to the parties prior to the hearing. Either party may then request another arbitrator, as long as the request is made in writing to the OCABR no later than 10 days from the date the arbitrator is appointed.

IMPARTIALITY OF ARBITRATORS:

Arbitrators cannot have a personal interest in the outcome of any hearing while they serve on home improvement program cases. Arbitrators are required to file a disclosure form with the OCABR stating any reasons which could affect their impartiality in hearing a case. Additionally, an arbitrator cannot know any of the participants involved in the scheduled hearing, except through the hearing process. Arbitrators also must not hold any prejudice or bias against any individual party or class of parties, which might be involved in the proceedings.

ARBITRATOR DISQUALIFICATION:

If either party has a reasonable basis to believe that the arbitrator is biased or has failed to disclose potential conflicts (as outlined in 201 CMR 14.06 (3) or (4)), that party may request that the arbitrator be disqualified. This request must be in writing and submitted to the OCABR no later than 10 days from the date the arbitrator is appointed.

ARBITRATOR'S DECISIONS:

The arbitrator will hear the merits of the case and issue a written and binding decision. The arbitrator's decision is final. If a party believes that an arbitrator made an error in the application of the law or in the conduct of the hearing, they may make a complaint in writing to the OCABR. The complaint may **NOT** be considered an appeal of any kind.

BEFORE THE HEARING

PRELIMINARY TELEPHONE CONFERENCE

After the appointment of the arbitrator, the parties will participate in preliminary telephone conference, unless the arbitrator determines that the call is unnecessary. The arbitrator may use this call to specify the issues to be resolved, to schedule the hearing or a site view, or to consider other matters that may expedite the arbitration proceedings.

SCHEDULING OF HEARINGS

Schedule: The Office of Consumer Affairs and Business Regulation (OCABR) and the arbitrator will attempt to schedule hearings according to the geographic and time of day needs of the parties. However, evening and weekend hours may be available for hearings only if justified and mutually agreed upon by the parties and the arbitrator.

Notice: The OCABR will mail a notice of the date, time and location of the hearing to both parties at least 21 days before the hearing. The arbitrator or the OCABR may call both parties to confirm the hearing date. A call placed at least 7 days before the hearing will be considered to be sufficient notice of the hearing, should any party claim that they did not receive the written notice.

Date: Generally, a hearing will be within 45 days of the acceptance of the *Request for Arbitration*. This deadline may be extended upon a showing of extraordinary circumstances, or upon the written consent of both of the parties.

DISCLOSURE AND EXCHANGE OF INFORMATION

Document Exchange: At least 2 days before the hearing, each party must provide the other party with any documents, exhibits, or information he or she intends to present at the hearing.

Site Inspections: The contractor may make a reasonable request to view the residence or property that is the subject of the arbitration. The contractor must make this request at least 7 days prior to the scheduled date of the hearing. The homeowner shall permit a reasonable inspection of the work that is the subject of the arbitration, and has the right to be present during the inspection. The contractor may not make any repairs or adjustments, but may use diagnostic tools.

The arbitrator may view the property at issue upon the request of a party or upon his or her own initiative. If a party wishes a site view, it is recommended that the party make a request far enough in advance of the hearing date to allow for the scheduling of a viewing. The site view may be held on the same day as the hearing. The arbitrator's site view is at the discretion of the arbitrator. The arbitrator may be accompanied by both parties, their designated agent, or by any person or persons whom the arbitrator may deem necessary.

Discovery: With the exception of the exchange of documents before the hearing and the site view, there shall be no discovery, except as ordered by the arbitrator or if both parties consent. The parties are encouraged to cooperate with each other in the exchange of information relevant to the dispute. If a disagreement arises over whether certain items should be produced, the matter will be referred to the arbitrator. The arbitrator may order discovery only for the following reasons:

- the arbitrator finds that the discovery is likely to be necessary to render a proper arbitration decision; or
- the arbitration finds that the discovery is likely to be necessary for a party to present a material element of the case against the other party.

Arbitrator Information Requests: The parties must comply with the arbitrator's request for any additional information within 7 days, or within such period as the arbitrator designates.

RESCHEDULING HEARINGS

Either party may make one request that the arbitrator reschedule the hearing. The request must be made prior to the day of the hearing and will only be granted if the party has a good cause for making the request. A request to reschedule on the day of the hearing will be considered default. The arbitrator also may reschedule any hearing for good cause.

Whenever a hearing is rescheduled, the arbitrator will notify the parties of the reason for the delay as soon as practical. If possible, the hearing will still be held within 45 days of the case's acceptance date.

WITHDRAWALS

Before the day of the hearing: A Claimant may withdraw his or her *Request for Arbitration* at any time prior to the day of the hearing, as long as notice is provided to the arbitrator and the other party. That party may reapply:

- Within the Claimant's eligibility period (2 years from the date of the contract); or
- Within two months, even if the original eligibility period has expired, if it is the Claimant's first withdrawal; or
- Within a reasonable time after a party fails to honor settlement terms, if the case was withdrawn as a result of a settlement agreement between the parties.

On or after the day of the hearing: A Claimant that withdraws his or her *Request for Arbitration* on or after the hearing, or a Claimant that defaults without good cause, may not reapply.

ARBITRATION FOR CLAIMS OF \$10,000 OR LESS: THE WRITTEN HEARING

WRITTEN HEARING PRESUMPTION

For claims of \$10,000 or less, there will NOT be an oral hearing, unless any party requests an oral hearing, or the arbitrator determines that an oral hearing is necessary. Instead, the arbitrator will review the merits of the case and issue a decision based upon a review of written documents submitted by the parties. This is called a written hearing.

Any party requesting an oral hearing must notify the OCABR and the opposing side within 10 days of the notice of acceptance of the case. If a *Counterclaim* has been filed, this deadline is extended. In that situation, any party requesting an oral hearing must notify the OCABR and the opposing side within 5 days after notice of acceptance of the *Counterclaim*.

WRITTEN HEARING PROCEDURES

1. The Office of Consumer Affairs and Business Regulation will mail a notice to the parties and request the parties to submit their respective contentions.
2. Within 10 days of the mailing of this notice, both the homeowner and the contractor shall submit 2 copies of the following information to the OCABR:
 - statement of facts of the case, signed under the pains and penalties of perjury.
 - any documents, proofs, briefs or written arguments that they wish to submit.

Any documents or proofs submitted must also be mailed to the other party.

3. The OCABR will issue a letter to the parties requesting replies to the information submitted. Each party may file one written reply to the statements and proofs submitted. This reply is due within 10 days of the mailing of the request for replies. **Any party that fails to reply within the specified time period will have waived the right to reply.**
4. When all the statements, proofs, and answers (if any) have been received by the OCABR, those documents will be transmitted to the arbitrator.
5. The arbitrator will examine the documents and may request further evidence from the parties, if necessary, within 10 days of receipt.
6. The arbitrator will close the hearing, and will have 14 days to issue a decision.

Important Note: A party may submit one (and no more than one) request for a 7 day extension for a document submission deadline. The party must make this request prior to the date of the submission deadline, and the request only will be granted if the party can demonstrate a good reason for the extension.

ARBITRATION FOR CLAIMS OVER \$10,000 THE HEARING

ATTENDANCE AT THE HEARING

If a Claimant's *Request for Arbitration* is accepted, the parties or their designated agents must attend the arbitration. However, the arbitrator has the discretion to allow either party to offer written testimony only, as long as the arbitrator and the other party are informed that only written testimony will be submitted and that they receive the written evidence at least 7 days before the hearing.

HEARING PROCEDURES

The hearing procedures for arbitration are less formal than court procedures. The arbitrator will administer an oath to each individual who will testify, and will arrange for the hearing to be tape-recorded.

The arbitrator will determine the order of testimony. In arbitration, the formal rules of evidence do not apply. The parties may introduce any relevant evidence that will assist the arbitrator in making a decision. Each party, however, should be concise and relevant to the matter before the arbitrator. In addition, all written statements shall include a statement signed by the witness under oath that his or her testimony is true. The arbitrator may accept or reject any evidence that he or she believes is or is not helpful in making a decision.

Each party may question the other after his or her presentation, and may question each witness after his or her testimony. The arbitrator may question any party or any witness at any time.

The arbitrator may consult with a building inspector or any other expert witness for technical advice or testimony. The arbitrator will provide a report of any such consultation to the parties. The arbitrator has the option of allowing the parties to respond to the report.

Generally, the hearing will be held within 45 days after a *Request for Arbitration* has been accepted, and generally all evidence will be presented within 60 days after the acceptance date. Once the oral hearing is complete and the evidence is presented, the arbitrator will declare the hearing closed.

HEARING LENGTH

The hearing should last no longer than four hours. If the arbitrator determines that additional hearing time is necessary to obtain sufficient evidence to render an award, the arbitrator may extend the hearing time. The hearing also may be extended upon the agreement of each of the parties and the arbitrator.

DEFAULTS

If a party does not attend the hearing or asks to reschedule the hearing on the day of the hearing, that is considered a default. In addition, after a warning, the arbitrator may end any hearing that becomes unmanageable due to the behavior of either party, and enter a judgement of default against the party's whose behavior became unmanageable.

If a party fails to attend the hearing, the arbitrator may still hold the hearing. If the party attending the hearing makes a sufficient showing of facts, the arbitrator may issue a judgment of default against the party who failed to appear.

If a defaulting party demonstrates good cause to the arbitrator for failing to appear, the arbitrator may set aside the default decision. A new hearing may then be scheduled. The defaulting party must make this request within a reasonable period of time after the hearing. This reasonable time period will be decided by the arbitrator.

THE DECISION

DECISION TIMELINE

Generally, the arbitrator will submit an arbitration decision to the Office of Consumer Affairs and Business Regulation (OCABR) no later than 14 days after the hearing is closed. The OCABR will mail a copy of the decision to both parties.

DECISION FORMAT

The arbitrator's decision will be in writing, and will include a finding of facts, and a clear calculation of the monetary award or award for specific work performance, if either is ordered.

Attached to the arbitrator's decision will be an advisory opinion from the arbitrator to the OCABR on the homeowner's actual loss, if any, calculated pursuant to 201 CMR 14.14. This advisory opinion of the actual loss value is for the exclusive purpose of assigning a monetary value to determine a homeowner's potential guaranty fund award. The actual loss value may be different from the monetary award issued by the arbitrator. For example, an actual loss value may not include consequential damages or an arbitration fee, but an arbitration monetary award may include those costs.

SCOPE OF AWARD

If the homeowner prevails, the arbitrator may require the contractor to complete, repair or replace the work, or pay the homeowner a monetary amount, or any other remedy the arbitrator sees fit to award. The arbitrator will not award a specific work performance by the contractor unless the homeowner provides written consent for the contractor to enter the homeowner's property. In such a case, the arbitrator will assign a monetary value to this award for the exclusive purpose of determining a homeowner's actual loss. The arbitrator will indicate whether or not the contractor may pay this monetary value to the homeowner as an alternative to performing the ordered work.

If the contractor prevails, the arbitrator may require the homeowner to pay the contractor a monetary amount.

Any monetary award may include contractual damages, consequential damages, and arbitration fees. The award may NOT include attorneys' fees or punitive damages.

The arbitrator will indicate the date by which the monetary award must be paid or by which the work must be completed. If this date is more than 21 days from the mailing date of the decision, the arbitrator will provide an explanation of the good cause reason for extending this compliance deadline beyond 21 days.

DISPUTING THE DECISION

The arbitrator's decision is final and legally binding. The following procedures, however, may be followed if a party is dissatisfied with an arbitrator's decision.

Technical corrections: Technical corrections include computational corrections, typographical corrections, or other minor corrections. Technical corrections do not constitute an appeal of an arbitrator's decision.

Either party may request a technical correction within 14 days after the mailing of the arbitrator's written decision. A request for a technical correction must be in writing and must be received by the OCABR and the other party within this time period. A request for a technical correction will not stop or toll any award/appeal period.

The arbitrator or the OCABR may make a technical correction to a decision.

Appeals: A party dissatisfied with an arbitrator's decision may appeal the decision in court, pursuant to M.G.L. c. 142A §4. An appeal must be filed within 21 days of the mailing of the arbitrator's written decision. (NOTE: the appeal is governed by M.G.L. c. 142A §4. The arbitration proceeding between a homeowner and a registered contractor is NOT an agency adjudicatory proceeding, subject to appeal under M.G.L. c. 30A §10)

The party requesting the appeal must notify the OCABR if the appeal is allowed.

201 CMR: OFFICE OF CONSUMER
AFFAIRS AND BUSINESS REGULATION

201 CMR 14.00: HOME IMPROVEMENT CONTRACTOR ARBITRATION AND GUARANTY
FUND

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14.01: Purpose

(1) Purpose. 201 CMR 14.00 sets forth procedures for operation of private arbitration between homeowners and contractors and/or subcontractors as required by M.G.L. c. 142A, § 4. It is designed to promote the speedy, efficient and fair disposition of disputes arising out of the improvement of an owner-occupied, one-to-four family residential home by a registered contractor or subcontractor. It also sets forth procedures for homeowner access to a Guaranty Fund. The Guaranty Fund, created by M.G.L. c. 142A, § 5, compensates homeowners for actual losses they incur as a result of registered contractor or subcontractor conduct found to be work performed in a poor or unworkmanlike manner or which is a common law violation or a violation of any statute or regulation designed for the protection of consumers.

(2) Applicable Regulations. Other regulations applicable to M.G.L. c. 142A include:

- (a) 780 CMR R6: Registration and Enforcement of the Home Improvement Contractor Program promulgated by the director of the Board of Building Regulations and Standards within the Executive Office of Public Safety.
- (b) 940 CMR 8.00: Mortgage Brokers and Mortgage Lenders promulgated by the Office of the Attorney General.
- (c) 209 CMR 42.00: The Licensing of Mortgage Lenders and Mortgage Brokers promulgated by the Division of Banks and Loan Agencies.

(3) Scope. 201 CMR 14.00 shall apply to all home improvement transactions with a written contract between a homeowner and a contractor or subcontractor registered with the Board of Building Regulations and Standards occurring on or after July 1, 1992. All references in 201 CMR to statutes and other regulations shall include amendments made to such statutes and regulations after the promulgation of 201 CMR 14.00.

14.02: Definitions

Unless otherwise stated, terms used in 201 CMR 14.00 are as defined or used in M.G.L. c. 142A.

201 CMR: OFFICE OF CONSUMER
AFFAIRS AND BUSINESS REGULATION

14.02: continued

Actual Loss means the amount as calculated pursuant to 201 CMR 14.14 and M.G.L. c. 142A for the exclusive purpose of assigning a monetary value to determine a claimant's guaranty fund award pursuant to 201 CMR 14.00.

Applicant means the owner occupant, authorized tenant or registrant covered by provisions of M.G.L. c. 142A, who files a request for arbitration form with an OCABR approved arbitration firm claiming a failure of performance under a residential home improvement contract.

Arbitration Firm means the individual or arbitration firm the director of OCABR has approved to conduct home improvement arbitrations. Where the approved arbitrator is an individual, the word "arbitration firm," where appropriate, shall apply to the individual.

Arbitrator means any person who has been certified by OCABR to perform home improvement contractor arbitration services either as an individual or in association with an approved firm pursuant to M.G.L. c. 142A and 201 CMR 14.00.

BBRS means the Board of Building Regulation and Standards.

Clear and Conspicuous shall be defined in a manner which is consistent with the definition provided by the applicable sections of the Attorney General's Retail Advertising Regulations, 940 CMR 6.01 and 6.01 (f) and the Attorney General's Mortgage Brokers and Mortgage Lenders Regulations, 940 CMR 8.03. 201 CMR 14.00 provides that "clear and conspicuous" shall mean that the material representation being disclosed is of such size, color, contrast, or audibility and is presented so as to be readily noticed and understood by a reasonable person to whom it is being disclosed.

Contractor means any person who owns or operates a contracting business who, through himself or others, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid for residential contracting work. For purposes of 201 CMR 14.00, the Board of Building Regulations and Standards will deem a contractor to be duly registered as required by a contractor is a registered contractor if the contractor is registered in accordance with M.G.L. c. 142A and 780 CMR R6 on the date of the contract with the owner.

Customary and Reasonable Effort means that action has been taken by or on behalf of an aggrieved homeowner to secure a satisfactory resolution to a dispute between a home improvement contractor and a homeowner. This standard may be satisfied by the following:

- (a) submitting evidence to the fund administrator that a writ of execution for a monetary court judgment was served upon the contractor by a constable or sheriff at the contractor's last known business address. An arbitration award must be converted to a court judgment in order to obtain a writ of execution for service by a constable or sheriff upon the contractor;
- (b) if the contractor is bankrupt, submitting evidence to the fund administrator from the United States Bankruptcy Court confirming that the contractor has filed for bankruptcy;
- (c) submitting evidence to the fund administrator that a service of court or arbitration order was attempted at all known or suspected addresses of the contractor by a constable or agent of the state; or
- (d) if a claim is properly made before a small claims court, submitting evidence to the fund administrator that a notice to show cause has been served upon the contractor by a constable or sheriff at the contractor's last known business address, and that the contractor has failed to pay the claim and has failed to defend the claim.

Designated Agent means a party any individual designated in writing to represent him or her. A designated party need not be an attorney.

Fund Administrator means the administrator of the Home Improvement Guaranty Fund, appointed by the director of the Office of Consumer Affairs and Business Regulation.

Guaranty Fund (including the term "fund") means the Home Improvement Guaranty Fund established pursuant to M.G.L. c.142A.

201 CMR: OFFICE OF CONSUMER
AFFAIRS AND BUSINESS REGULATION

14.025: continued

OCABR means the Office of Consumer Affairs and Business Regulation.

Owner (including the term "homeowner") means any owner of a pre-existing owner-occupied building containing at least one but not more than four dwelling units, or a tenant authorized by the owner thereof, who orders, contracts for, or purchases the services of a contractor or subcontractor. An owner occupying a condominium in a building containing no more than four dwelling units qualifies as an owner under this definition. A condominium association does not qualify as an owner.

Owner-Occupied means the residential building of at least one but not more than four dwelling units and occupied by the owner as a primary residence.

Registrant means any person duly registered as a home improvement contractor or subcontractor under the provisions of M.G.L. c. 142A and 780 CMR R6.

Registration number means the number assigned to the contractor or subcontractor after s/he has been approved for registration by the Board of Building Regulations and Standards.

Request for Arbitration Form means the form provided by the director of OCABR to approved arbitration firms for dissemination to applicants who must then complete the form and return it to the arbitration firm when filing for an arbitration hearing.

Unworkmanlike Manner means that materials which are used and methods which are employed are of substandard, unreasonable, imprudent, or inadequate quality or are inconsistent with good construction practices; that materials used and methods employed are wholly or partially inaccurate or unacceptable in final appearance or function; or, that materials used and methods employed are unsafe or may result in an unsafe or non-functional final product.

14.03: Arbitration Requests

(1) List of Approved Arbitration Firms. The director of OCABR shall maintain a list of arbitration firms which have been approved to arbitrate home improvement complaints under M.G.L. c. 142A and 201 CMR 14.00. Such list shall be public and shall be made available upon request.

(2) Arbitration Application. Any eligible party seeking arbitration of a home improvement dispute shall submit a request for arbitration on a form developed by the director of OCABR, to the arbitration firm. The arbitration firm shall supply the form to an applicant on request.

(3) Eligible Arbitration Firms. An applicant must choose an arbitration firm from a list of OCABR approved firms to perform arbitration services.

(4) Homeowner Arbitration Eligibility. If an applicant is a homeowner, the applicant is eligible for arbitration only if the contractor is registered with the director of BBRS and the parties have a written agreement.

(5) Contractor Arbitration Eligibility. If a registered contractor files a request for arbitration, the parties' written agreement must contain an arbitration clause and must be signed by the homeowner. In such an event, the homeowner may file a counterclaim.

(6) Arbitration Attendance. If an applicant's request for arbitration is accepted, the parties or their designated agents must attend the arbitration, except as provided in 201 CMR 14.13(a).

(7) Application Deadline. The arbitration firm must receive a request for arbitration within two years of the date of the contract signed by the registrant and the homeowner. A request for arbitration form shall be deemed timely filed if it is date stamped or postmarked within this time period.

201 CMR: OFFICE OF CONSUMER
AFFAIRS AND BUSINESS REGULATION

14.03: continued

- (8) Application Requirements. To be accepted for arbitration, the request for arbitration must:
 - (a) comply with 201 CMR 14.03(2) and (3);
 - (b) be complete;
 - (c) be for a one-to-four unit, owner-occupied residence or property located in Massachusetts;
 - (d) be for work contracted for on or after July 1, 1992;
 - (e) include a narrative description of the problem;
 - (f) involve a contractor registered with the Board of Building Regulations and Standards;
 - (g) include payment of the required application fee and a copy of the written contract; and
 - (h) include a monetary amount sought or clearly indicate that only specific performance is sought.
- (9) Eligible Places for Arbitration. All arbitration hearings must take place in a neutral location within a 50-mile radius of the residence or property in dispute, unless the parties agree otherwise.
- (10) Tolling of Application Deadline. A request for arbitration must be filed within two years of the effective date of the contract between the parties. However, the two-year statute of limitations shall be tolled in those instances where an aggrieved homeowner enters into formal mediation proceedings or where equity so requires.
- (11) Parties to Arbitration. Absent a court order, only the homeowner or owner-authorized tenant and the registered contractor shall be parties to an arbitration conducted under M.G.L. ch. 142A. The arbitration firm, arbitrator and OCABR do not have authority to join third parties.
- (12) Prohibition Against Consolidation. Absent a court order or the written approval of OCABR, neither the arbitration firm nor the arbitration shall consolidate an arbitration case with another arbitration case.

14.04: Arbitration Firm

- (1) Firm Duties. The arbitration firm must be able to take on the daily administrative duties of the program and be able to provide information and counsel to prospective applicants. These duties shall include, but not be limited to, reviewing cases for technical acceptability; checking the status of the contractor or subcontractor to determine if s/he is registered with the Board of Building Regulations and Standards; collecting application fees; providing information to the parties prior to the hearing; providing tape recorders and tapes for the hearing; providing training sessions for new arbitrators; reviewing arbitrators' decisions; acting on requests for technical corrections; providing tapes of the hearing to parties, if requested- providing statistical reports of the program as requested by OCABR; printing and distributing all applications and materials necessary to the program (except that OCABR will create the application form and provide a basic consumer information pamphlet for the program); and providing general record keeping functions.
- (2) Document Retention. The arbitration firm shall retain any documents, tapes and materials for at least three years unless otherwise instructed by OCABR.

14.05: Processing of Request for Arbitration

- (1) Request Intake. The arbitration firm shall date-stamp and assign a case number upon receipt of a submitted request for arbitration form.
- (2) Request Review. The arbitration firm shall review submitted request for arbitration forms for completeness and compliance with 201 CMR 14.03 within two weeks of receipt.
 - (a) Incomplete forms, shall be returned to the applicant for completion. Such forms when completed must be received by the OCABR or arbitration firm within 30 days or the applicant's period of eligibility for filing the request, whichever is later. The arbitration firm may reject a request that is not timely filed.
 - (b) Requests not found in compliance with 201 CMR 14.03 shall be rejected and the reason for the rejection shall be sent to the applicant in a timely fashion.

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- (3) Request Processing. The arbitration firm shall date-stamp complying, completed, and reviewed forms to indicate their acceptance for arbitration, promptly notify the claimant that the application satisfies the qualifications for acceptance, and advise the claimant of the filing fee due (less the \$50 application fee). Upon receipt of the balance of the filing fee, the arbitration firm shall send to both parties acknowledgment that the case has been accepted. The acceptance date shall trigger a 60-day period in which the hearing must be held and all evidence must be presented.
- (4) Incomplete or Erroneous Requests. The arbitration firm may rescind any acceptance of a request for arbitration granted in error or because of incomplete or erroneous information.

14.06: The Arbitrator

- (1) Selection of Arbitrator. The arbitration firm shall appoint the arbitrator when the applicant has filed a completed request for arbitration form. Unless determined otherwise by the arbitration firm, a single arbitrator shall conduct each hearing. If there is more than one arbitrator, all the arbitrators shall conduct the hearing, but a majority may determine any question and render a final award.
- (2) No Party Approval Power. The choice of the arbitrator is not subject to the approval of either party.
- (3) Lack of Bias Requirement. The arbitrator shall not have a personal interest in the outcome of any hearing, nor be acquainted with any of the participants except as such acquaintance may occur in the hearing process, nor hold any prejudice or bias toward any individual party or class of parties which might be involved in the proceedings.
- (4) Disclosure of Conflicts. If an arbitrator is currently, or has been in the past, a contractor or subcontractor, either part-time or full time, or if the arbitrator has been the claimant or respondent for any action pursuant to M.G.L. c. 142A, he must disclose this fact to the parties prior to the hearing. Either party may then request another arbitrator.
- (5) Arbitrator Disqualification. If either party has a reasonable basis to believe that an arbitrator has violated either 201 CMR 14.06(3) or (4) that party may request that the arbitrator be disqualified by submitting the request in writing to the Director of OCABR and the arbitration firm before the hearing if based on information known at that time. Any such request shall be submitted in writing to the arbitration firm and the director of OCABR no later than ten days from the date the arbitration firm provides notice of the appointment to the arbitrator.
- (6) Code of Ethics. The arbitrator shall be guided by the standards of ethical conduct established in "The Code of Ethics for Arbitrators in Commercial Disputes" prepared by a Joint Committee consisting of a Special Committee of the American Arbitration Association and a Special Committee of the American Bar Association.
- (7) Preliminary Telephone Conference. The parties or their attorneys or representatives shall hold a preliminary telephone conference at a date soon after the appointment of the arbitrator, unless the arbitrator determines that a preliminary telephone conference is unnecessary, or unless the parties agree to dispense with the preliminary telephone conference and the arbitrator does not object to such dispensing.

14.07: Settlement by Submission of Documents for Claims of \$10,000 or Less

- (1) Written Hearing Presumption. Where no party's claim exceeds \$10,000, exclusive of claimed interest and arbitration fees or costs, the dispute shall be resolved by submission of documents (hereinafter called a written hearing), unless any party requests an oral hearing, or the arbitrator determines that an oral hearing is necessary. A party desiring an oral hearing must notify the arbitration firm and the opposing side within ten days of the notice of acceptance of the case, or, in the event a counterclaim is timely filed, within five days after notice of the firm's acceptance of the counterclaim. After that time, an oral hearing may only be granted with the arbitrator's consent.

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- (2) Written Hearing Procedures. The written hearing shall conform to the following procedures:
- (a) The parties submit in writing to the arbitration firm their respective contentions, including a statement of facts, duly sworn to, together with such proofs properly verified, as they wish to submit. Briefs or written arguments may also be submitted at this time.
 - (b) All such documents and proofs submitted by each party shall be filed with the arbitration firm no later than ten days after the mailing of the notice by the arbitration firm calling for their filing.
 - (c) All documents and proofs submitted by each party shall be sent to the other party and to the arbitration firm in duplicate.
 - (d) Each party may file one written reply to such statements and proofs within a period of ten days from the date of the arbitration firm's letter to the parties requesting replies.
 - (e) Failure of any party to make such a reply within the specified period of time shall be deemed to be a waiver of its right to reply.
 - (f) When all of the statements, proofs and answers (if any) have been received by the arbitration firm, they shall be transmitted to the arbitrator.
 - (g) The arbitrator shall examine the documents and request further evidence from either party, or both parties, if necessary, within ten days of receipt. The documents submitted to the arbitrator and the arbitration firm for the written hearing shall be the official record of the hearing.
 - (h) Either party may request, on no more than one occasion, that the arbitrator give a seven day extension to the date of submission required by the arbitrator. Such request must be made prior to the date of submission and shall be granted only upon a showing of good cause. If the arbitrator does not request further evidence, the written hearing is declared closed at this time and the requirements of 201 CMR 14.15 apply.

14.08: Notification and Scheduling of Arbitration Hearing

- (1) Place of Hearings. When scheduling hearings, the arbitrator shall attempt to accommodate the geographic and time-of-day needs of the parties.
- (2) Weekday Presumption. Evening and weekend hours may be made available for hearings if justified and mutually agreed upon by the parties and the arbitrator.
- (3) Notice of Arbitration Acceptance. Within seven days after the acceptance of a request for arbitration form, the arbitration firm shall mail notice thereof to the parties. General information about the arbitration process shall be included with the notice including all procedural rules.
- (4) Counterclaim Deadline and Fee. All counterclaims must be submitted to the arbitration firm within ten days after notice from the arbitration firm of acceptance of the case. In the absence of extraordinary circumstances, the arbitrator may grant a party no more than one seven-day extension of the time in which to respond to the demand for arbitration or counterclaim. Additional claims and amendments may not be submitted without leave from the arbitrator. No new or different claim may be submitted, however, once the time for filing has expired. The party filing a counterclaim must pay a fee in accordance with the fee schedule established by OCABR. The fee must be paid upon filing.
- (5) Notice of Hearing. The arbitration firm shall mail notice of the date, time, location of the hearing, and name of the arbitrator to both parties no later than 21 days prior to the hearing.
- (6) Hearing Date. The date of the hearing shall be within 45 days of the acceptance of the request for arbitration form. The arbitrator may extend the 45 day hearing period only upon a showing of extraordinary circumstances or upon the written consent of both of the parties.
- (7) Hearing Confirmation. The arbitrator or arbitration firm may call both parties to confirm the hearing date. A call placed no later than seven days prior to the hearing shall constitute sufficient notice of the hearing should either party claim nonreceipt of the notice provided for in 201 CMR 14.09.

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14.09: Disclosure of Information

- (1) Document Disclosure and Settlement of Disputes. Each party shall provide to the other party any documents or information that s/he intends to present at the hearing no later than two days before the hearing including copies of all hearing exhibits. The arbitrator shall decide any disputes over the production of information.
- (2) Home Inspections By Registrant. Upon reasonable request by the registrant, if such request is received no later than seven days prior to the scheduled date of the hearing, the homeowner shall permit the registrant to inspect his residence or property, which ever is the subject of the complaint. The homeowner shall have the right to be present at such inspection. The registrant shall use no tools other than diagnostic tools and shall not make any repairs or adjustments.
- (3) Prohibition Against Discovery. There shall be no discovery except as provided in 201 CMR 14.09(1) and 14.09(2), unless each party consents or unless discovery is ordered by the arbitrator for the following reasons:
 - (a) The arbitrator finds that the discovery is likely to be necessary to render a proper arbitration decision; or
 - (b) The arbitrator finds that the discovery is likely to be necessary for a party to present a material element of the case against the other party.
- (3) Additional Information Deadline. The parties shall comply with the arbitrator's requests for additional information within seven days, or within such period as the arbitrator designates.
- (4) Inspections By Arbitrator. At either party's request, and if the arbitrator deems it appropriate, the arbitrator may view the residence or property that is the subject of the dispute. Upon reasonable notice to both parties, the arbitrator may view the site alone or s/he may be accompanied by both parties, their designated agent or by such person or persons whom she may deem necessary.
- (5) Representation By An Attorney. Any party represented by an attorney or other authorized agent must disclose the name, address and telephone number of the representative to the arbitration firm and the opposing side at least seven days prior to the first scheduled hearing date or date for submission of documents as set forth in 201 CMR 14.01.

14.10: Rescheduling, Arbitration Hearings

- (1) Rescheduling. Either party may request, on no more than one occasion, that the arbitrator reschedule the arbitration hearing. Such request must be made prior to the day of the hearing and shall be granted only upon a showing of good cause.
- (2) New Hearing Date. If a request for rescheduling is granted, the arbitrator shall record the date the request was received, and assign a new hearing date and location if at all possible falling within the original 45 day period provided for in 201 CMR 14.07(4). The arbitrator shall notify both parties of the new date as soon as practical and by any means appropriate for the time then remaining before the hearing.
- (3) Good Cause Rescheduling. The arbitrator may reschedule any hearing for good cause. If at all possible, the new hearing date shall be within the original 45 day period provided for in 201 CMR 14.07(4).
- (4) Notice of Rescheduled Hearing. The arbitrator shall notify both parties of the reason for the delay and the new date as soon as practical.

14.11: Failure to Appear

- (1) Failure to Appear Defaults. If a party fails to appear at the hearing, the arbitrator may enter a finding by default against that party upon a determination that the appearing party has made a showing of sufficient facts to warrant an award.

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- (2) Default Forgiveness. If the defaulting party, within a reasonable period after the hearing as determined by the arbitrator, demonstrates good cause to the arbitrator for failing to appear, the arbitrator may set aside the default. A new hearing may then be scheduled pursuant to 201 CMR 14.00 or a written hearing may be used to resolve the dispute pursuant to 201 CMR 14.06.
- (3) Failure to Appear Arbitration. An arbitration may proceed in the absence of any party or representative who, after due notice, fails to be present or fails to obtain a postponement.

14.12: Withdrawal

- (1) Arbitration Request Withdrawal. An applicant may withdraw his/her request for arbitration at any time prior to the hearing by notice to the arbitrator and to the other party. Cases withdrawn at any time as a result of a settlement agreement between the parties may be refiled if either party fails to honor the settlement terms.
- (2) Withdrawals Without Prejudice. A withdrawal received prior to the day of the hearing shall constitute a withdrawal without prejudice from the arbitration system, except that the timeliness of the applicant's request for arbitration shall be preserved for two months after the first voluntary withdrawal.
- (3) Withdrawals With Prejudice. A withdrawal received on or after the day of the hearing or as a result of a default without good cause shall be a withdrawal with prejudice.

14.13: The Hearing

- (1) Single Arbitrator. A single arbitrator shall preside over each hearing, unless otherwise determined by the arbitration firm. The conduct of the hearing shall encourage a full and complete disclosure of the facts.
- (2) Four Hour Hearing Limit. The hearing shall last no longer than four hours. If the arbitrator determines that additional time is necessary to obtain sufficient evidence to render an award, the arbitrator may extend the hearing time. The hearing may also be extended upon the agreement of each of the parties and the arbitrator. When a hearing is extended, the arbitrator shall be required to account for the additional time in the final award.
- (3) Arbitration Hearing Record. The arbitrator shall tape record the hearing. Said tape shall be the official record of the hearing and the parties may not make independent tapes of the hearing. Copies of the official record tape may be obtained from the arbitration firm or OCABR for a nominal fee. The formal rules of evidence shall not apply.
- (4) Oath. The arbitrator shall administer an oath or affirmation to each individual who testifies.
- (5) Evidence Presentation. The parties may introduce any relevant evidence that will assist the arbitrator in making a decision. Unduly repetitious or clearly irrelevant evidence may be excluded. It shall, however, be in the arbitrator's sole discretion whether to examine the residence or property.
- (6) Completeness Responsibility. Each party is responsible for presenting all his or her evidence in a concise manner on the day(s) of the hearing.
- (7) Questions of Opposing Party. The arbitrator shall allow each party to question the other after his or her presentation and shall allow questions of each witness after his or her testimony. The arbitrator may question any party or witness at any time.
- (8) Order of Hearing. The arbitrator shall determine the order of the hearing.

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(9) Oral Hearing Presumption. For claims over \$10,000, the hearing procedure presupposes that both parties or their designated agent will be present. However, within the arbitrator's discretion, either party may offer written testimony only, as long as the arbitrator and the other party are informed of such and are in receipt of the evidence at least seven days prior to the day of the hearing. Written hearings shall be conducted pursuant to the procedures set out in 201 CMR 14.07(2).

(10) Sworn Statement. All written testimony shall include a statement signed by the witness under oath that his or her testimony is true.

(11) Discretionary Arbitrator Consultations. The arbitrator may consult with the building inspector or any other expert witness for technical advice or testimony. The arbitrator shall provide a report of any such consultation to all parties. The arbitrator may in his or her discretion allow rebuttal to the report.

(12) Unmanageable Hearings. After a warning, the arbitrator may terminate any hearing that becomes unmanageable due to the behavior of either party and enter judgment by default against the party whose behavior made the hearing unmanageable.

(13) Additional Good Cause Hearings. For good cause shown as determined by the arbitrator, the arbitrator may schedule one additional hearing after the initial hearing within a reasonable time period as determined by the arbitrator.

(14) Non-compliance Orders. If either party fails to comply with 201 CMR 14.00, the arbitrator or the arbitration firm shall make such orders as are just.

14.14: Determining Actual Loss

The calculation of Actual Loss for determining payments from the Guaranty Fund shall be measured by the following methods:

(1) Calculation When No Work Is Performed. If the contractor abandoned the contract without doing any work, the actual loss shall be the amount which the homeowner paid to the contractor under the terms of the contract.

(2) Calculation When Some of the Work Is Performed. If the contractor partially and properly completed some of the work which was agreed to under the terms of the contract, the actual loss shall be totalled by adding the amount of the reasonable cost of completing the contract and, if necessary, repairing the contractor's defective performance, and by subtracting the part of the contract price that has not been paid by the owner.

(a) Determination of Grossly Underbid Contracts. Upon a determination by the arbitrator or OCABR that the contractor grossly underbid the contract with the result that competent workmanship to finish the contract will cost significantly more than the original contract price, the actual loss will not include the owner's cost to complete the contract.

(b) Calculation for Grossly Underbid Contracts. Upon such a determination, the actual loss shall be the amount which the owner paid to the contractor, minus the value of any work properly completed, minus the cost of any materials properly used, plus, if necessary, the cost to correct that portion of the contracted work that was improperly completed.

(3) Calculation When All of the Work Is Performed, But Performed Incorrectly. If the contractor fully but improperly completed work that was agreed to under the terms of the contract, the actual loss shall be the amount required to correct the improperly completed work.

14.15: The Decision

(1) Decision Deadline. The arbitrator shall submit an arbitration decision to the arbitration firm and/or OCABR no later than 14 days from the date the hearing is closed. The arbitration firm shall mail a copy of the decision to both parties.

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- (2) Form of Decision. The arbitrator shall insure that all decisions are in writing, dated and signed. The written decision shall contain a finding of facts, and a clear calculation of the monetary award if any is ordered. The written decision may contain an award of specific performance, or an order as appropriate. In addition, the written decision may include a monetary determination of the claimant's actual loss as specified in 201 CMR 14.14.
- (3) Award Compliance. If the homeowner prevails, the arbitrator may require the registrant to complete the work, repair or replace the work or pay the homeowner a monetary amount, or any other remedy or combination of remedies the arbitrator sees fit to award. The arbitrator may also set a time limitation for compliance pursuant to 201 CMR 14.17(1).
- (4) Calculation of Value of Specific Performance. In the case of an award of specific performance, the arbitrator shall assign a monetary value to said award for the exclusive purpose of determining a claimant's actual loss. Payment of said monetary value shall not be considered a compliance alternative to the award of specific performance unless allowed under the stated terms of the award.
- (5) Contract Access for Specific Performance Awards. In the case of an award of specific performance, the arbitrator may allow the registrant access to the residence or property to complete or repair the work if he is satisfied that allowing continued access to the property would not result in non-correction of the problem complained of or further damage to the premises. The arbitrator shall not award specific performance unless the homeowner provides written consent for the registrant to enter the homeowner's property.
- (6) Payment of Registrant Counterclaims. If the registrant prevails on a properly filed counterclaim, the arbitrator may require the homeowner to pay the registrant a monetary amount.
- (7) Limitations of Award Content. Any monetary award may include contractual damages, including consequential damages, and arbitration fees. No monetary award shall include attorneys fees or punitive damages.

14.16: Disputing the Arbitrator's Decision

- (1) Technical Corrections By Administrators. The arbitrator, arbitration firm or the director of OCABR may make "technical corrections" to a decision. "Technical corrections" shall include computational corrections, typographical corrections, and other minor corrections. Determination as to whether or not a requested correction qualifies as technical shall be the decision of the arbitration firm and/or OCABR.
- (2) Technical Correction Requests. Either party may request a technical correction. Such requests shall be made in writing, setting forth the requested correction and reason therefor, and must be received by the arbitration firm and the other party within 14 days after the mailing of the arbitrator's full written decision. A request for technical corrections will not stop any award appeal period.
- (3) Appeals. A dissatisfied party may file an appeal pursuant to M.G.L. c. 142A, § 4. The party requesting the appeal must notify OCABR if the appeal is allowed.

14.17: The Award

- (1) Award Completion Deadline. The parties shall cooperate to expedite the completion of the work or the transfer of a monetary award, whichever is appropriate. Any work ordered by the arbitrator's finding shall be completed within 21 days of the mailing date of the finding unless both parties agree otherwise or unless the arbitrator, arbitration firm, or OCABR extends the due date for good cause pursuant to 201 CMR 14.17(5).
- (2) Calculation of Award Appeal Period. In computing any award appeal period, the last day of the period so computed shall be included unless it is not a business day, in which event the period shall run until the end of the next business day.

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(3) Legal Status of Findings of Fact. An arbitrator's findings of fact shall be prima facie evidence in any subsequent appeal brought by either party ensuing from the matter considered in arbitration.

(4) Homeowner Award Confirmation Notice. A prevailing homeowner shall contact the arbitration firm no sooner than 21 days and no later than 30 days after the mailing date of the arbitrator's decision to confirm whether the contractor has complied with the award. If no such notice is received, the arbitration firm shall contact the homeowner promptly. If the contractor has not complied with the award, the arbitration firm shall notify OCABR in writing and include the complete case file along with the notification. OCABR may then notify the home improvement contractor registration authority and/or the attorney general in order to recommend any appropriate sanction against the contractor which may be available to assure compliance of the order.

(5) Extension of Award Compliance Deadline. The arbitration firm or OCABR may extend the due date for the award and the notification date made pursuant to 201 CMR 14.17(4) for a reasonable period of time for good cause. Such extension shall not exceed ten calendar days from the original due date absent extraordinary circumstances. The arbitration firm or OCABR shall provide the extended due date and the reason for the extension to the parties in writing prior to the expiration of the initial time period.

14.18: Establishment of the Guaranty Fund

(1) Establishment of the Guaranty Fund. Pursuant to M.G.L. c. 142A, there shall be established a Home Improvement Guaranty Fund within OCABR.

(2) Purpose of Fund. The purpose of the fund is to compensate owners for actual losses as defined by 201 CMR 14.14 and M.G.L. c. 142A incurred as a result of a registrant's conduct which has been found by an approved arbitrator or a court of competent jurisdiction to be work which is:

- (a) performed in a poor or unworkmanlike manner;
- (b) a common law violation or a violation of any statute or regulation designed for the protection of consumers, including but not limited to M.G.L. c. 93A and prohibited acts listed in M.G.L. c. 142A, § 17.

(3) Fund Administrator. A fund administrator, appointed by the director of OCABR, shall be responsible for implementing the provisions of M.G.L. c. 142A and 201 CMR 14.00.

(4) Fund Claim Requirements. A homeowner may make a claim to the fund only if he has complied with the provisions of M.G.L. c. 142A, § 3 and has filed his claim with the fund within six months after the owner has obtained a judgment or arbitration award. All claims shall be filed within this six month period, even if the Owner has not exhausted all collection efforts.

(5) Fund of Last Resort Requirements. Payment from the fund may not be made to the homeowner unless the owner has exhausted all such customary and reasonable efforts as defined in 201 CMR 14.02 to collect the judgment or award.

14.19: Contractor Fees to the Guaranty Fund

(1) Registrant Fees. Every person registered under M.G.L. c. 142A as a home improvement contractor shall pay a fee to the Guaranty Fund with his application for registration.

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(2) Fee Amounts. The amount of the fee shall be determined on a sliding scale based upon the number of persons in the registrant's employ at the time of his application as follows:

Number of Employees	Guaranty Fund Contribution
less than four	\$100
four to ten	\$200
11 to 30	\$300
more than 30	\$500

(3) Fee Refunds. If the home improvement contractor registration authority denies an application for registration, the registrant's payment to the guaranty fund shall be refunded.

(4) Presumption Against Multiple Fees. No registrant shall be required to pay the guaranty fund fee more than once unless the fund administrator makes a determination that the amount of the fund is insufficient to maintain it at a level commensurate with claims made against it.

(5) Annual Fee Limitation. No registrant shall be required to pay the guaranty fund fee more than once in any 12 month period.

(6) Additional Assessments. If the fund administrator determines that the amount of the fund is insufficient to maintain it at a level commensurate with claims made against it, after a public hearing and upon consultation with the fund administrator each registrant may be assessed an appropriate fee which shall not exceed the amount of the registrant's original assessment.

(7) Suspension for Non-payment. The fund administrator shall recommend that the registrant's registration be suspended if he fails to pay the required assessment to the guaranty fund within 60 days of submittal of registration application or notification of a reassessment.

(8) Administrative Penalties. Administrative penalties assessed for violations of any provisions of M.G.L. c. 142A committed by registrants shall be deposited into the guaranty fund.

14.20: Duties of Fund-Administrator

(1) Notice to Contractor. No less than 30 days prior to the payment of a claim, and again when a claim has been paid, the fund administrator shall provide written notice to the contractor found responsible for the claim that such payment will be, or has been made. The notice shall be sent to the last known address of the contractor by certified mail, return receipt requested, and shall include information about the contractor's responsibility to reimburse the fund as well as any sanctions which may be imposed pursuant to M.G.L. c. 142A for non-payment.

(2) Fund Reimbursement. When a payment from the fund is awarded to an owner as a result of a claim against a registered contractor, the fund administrator may, at his or her discretion:

- (a) require the contractor to reimburse the fund in full within 30 days of notification that a claim has been paid; or,
- (b) initiate an agreement with the contractor allowing said contractor to reimburse the fund by installment, the frequency and amount of which shall be determined by the fund administrator.

(3) Revocations of Registration for Non-Reimbursement. If the contractor fails to reimburse the fund pursuant to 201 CMR 14.20(2), the fund administrator shall recommend that the contractor's registration be revoked pursuant to M.G.L. c. 142A, § 2. The fund administrator shall also notify the Attorney General at the same time and recommend that legal proceedings to recover the unpaid amount which is, to be reimbursed to the fund be initiated pursuant to M.G.L. c. 142A, § 8.

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(4) Fund Administrator Reports. The fund administrator shall provide a written report to the director of OCABR on a semiannual basis relative to the fund. Said report shall, provide general information about the fund, including, but not limited to investment and interest income, liquidity of funds, contractor contributions, claims and other disbursements paid from the fund relative to the health of the fund and any recommendations pertaining to maintaining the solvency of the fund. Said report shall be made available to the general public upon request.

14.21: Payments from the Guaranty Fund

- (1) Award Amounts. The fund administrator may award:
 - (a) to any single claimant no more than \$10,000 or the amount necessary to compensate the claimant for his actual loss, whichever is less; and
 - (b) no more than \$75,000 per 12 month period in aggregate claims which are the result of a single registrant's actions pursuant to M.G.L. c. 142A, unless the registrant has repaid the fund for the full amount required pursuant to M.G.L. c. 142A, § 8; provided however that it is within the discretion of the fund administrator to waive the limit with cause.
- (2) Registered Contractor Requirement. Payments from the fund may only be awarded to an "owner" who contracts with a registered contractor, as defined in 201 CMR 14.02.
- (3) Unregistered Contractors. Payments from the fund may not be awarded in cases where the home improvement contractor was unregistered.
- (4) Building Permit Requirement. Payments from the fund may not be awarded to an owner who secured his or her own building permit for the contracted work in dispute unless the contractor failed to inform the homeowner, as required by M.G.L. c. 142A, § 2, that homeowners who secure their own permits will be so excluded from the fund.
- (5) Actual Loss Payments. Payments from the fund may only be awarded for actual losses as defined by 201 CMR 14.14 and M.G.L. c. 142A and may not be awarded for consequential or punitive damages, personal injury, attorney's fees, court or arbitration costs or interest.
- (6) Required Process. Payments from the fund may be awarded to an owner only if he has brought an action to enforce any provision of M.G.L. c. 142A in court or, in the alternative, through the state approved arbitration program as outlined in 201 CMR 14.00, and has exhausted all such customary and reasonable efforts to collect the judgment or award, and has filed his claim with the fund in the time frame allowed.
- (7) Application. Payments from the fund may be awarded to an owner only after the fund administrator receives a completed application form provided by OCABR.
- (8) Additional Application Documents. Accompanying the application form, the homeowner shall submit a copy of any court or arbitration judgment obtained against the registrant including findings of fact and conclusions of law, if any. In addition, a notarized affidavit signed and sworn to by the homeowner shall be submitted, affirming that:
 - (a) s/he has complied with all the requirements of M.G.L. c. 142A;
 - (b) s/he has obtained a court judgment or arbitration finding;
 - (c) all or some specified portion of the court judgment or arbitration finding remains unpaid;
 - (d) all required evidence has been submitted demonstrating that the claimant has exhausted customary and reasonable efforts to collect.
- (9) Application Review. Upon receipt of the application with all required attachments and notarized affidavit, the fund administrator shall inspect all documents for their veracity. If the fund administrator determines that said documents verify that the owner has exhausted all customary and reasonable efforts to collect the award without success, the fund administrator may order payment out of the guaranty fund for the amount of the owner's actual loss.

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(10) Six Month Application Deadline. Payments from the fund may be awarded only if the fund administrator receives an application within six months of the date upon which a court judgment or arbitration finding issued against the registrant.

(11) Repayment to Guaranty Fund by Contractor. If a contractor's registration is revoked pursuant to M.G.L. c. 142A, § 15(b), the contractor would not be eligible to receive a new or renewed registration or to operate under another registration until the entire amount of the claim, plus a reasonable amount of interest to be determined by the fund administrator, has been repaid to the fund in full, beginning from the time said claim was disbursed from the fund.

(12) Claims Procedure for Exhausted Fund. If at anytime the money deposited in the fund is insufficient to satisfy the approved claim or portion thereof, the fund administrator, when sufficient money has been deposited in the fund, shall satisfy the unpaid claims or portions thereof in the order that the claims were originally filed.

(13) Authorization to Proceed Against Contractor. If the registrant does not repay the amount paid from the fund, plus interest, according to the term is set forth by the fund administrator pursuant to 201 CMR 14.20(2), the fund administrator shall notify the Attorney General who shall be authorized to initiate proceedings in superior court against said contractor for failure to reimburse the fund.

(14) Court Judgment or Arbitration Award Requirement. A court judgment or arbitration award required by M.G.L. c. 142A, § 5 and 201 CMR 14.00 may be satisfied by presenting to the Fund Administrator the following:

- (a) documentation from & United States Bankruptcy Court confirming that:
 - 1. the contractor's debts have been discharged;
 - 2. the bankruptcy case has been closed; and
 - 3. the homeowner is precluded by the Bankruptcy Court from pursuing a court judgment or arbitration award against the contractor;
- (b) proof of the existence of a valid cause of action arising out of the improvement of an owner-occupied, one-to-four family residential home by a registered contractor or subcontractor for conduct alleged to be work performed in a poor or unworkmanlike manner which is a common law violation or a violation of any statute or regulation designed for the protection of consumers;
- (c) evidence that the claim was presented within two years and six months of the date the contract was signed by the parties; and
- (d) proof of actual loss calculated pursuant to M.G.L. c.142A and 201 CMR 14.13.

The Fund Administrator shall hold a written hearing to consider the evidence and render a decision on the homeowner's eligibility for reimbursement from the Fund, pursuant to 201 CMR 14.06.

14.22: Miscellaneous

(1) OCABR Arbitration Oversight. The OCABR shall maintain oversight responsibility to promote the fairness and efficiency of the private arbitration services program.

(2) OCABR Advisory Opinions. The director of OCABR may from time to time develop internal guidelines for the operation of the private arbitration services program and may issue advisory opinions.

(3) Waiver. The director of OCABR may, in his or her sole discretion, waive any of 201 CMR 14.00, if such waiver would be in the public interest and would further the purpose or intent of the private arbitration services program or guaranty fund

(4) Non-Preclusion of Additional Remedies. A claim to the guaranty fund shall not limit the availability of other legal or equitable remedies unless the claim made is for the full amount of the value of the work claimed as damages, in which case the registrant, upon repayment to the fund, may use repayment as a defense via settlement.

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14.22: continued

(5) Correspondence Copies. Copies of all correspondence any party sends to the arbitrator, the arbitration firm or the director of OCABR after the acceptance of the request for arbitration shall be sent to the other party.

(6) Effective Date. 201 CMR 14.00 shall apply to home improvement contracts entered into on or after July 1, 1992.

REGULATORY AUTHORITY

201 CMR 14.00: M.G.L. c. 142A.

CHAPTER 142A.

REGULATION OF HOME IMPROVEMENT CONTRACTORS.

Section	Section
1. Definitions.	13. Registration records; building permits, contracts and advertisements.
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3. Civil actions; private arbitration program.	15. Suspension or revocation of certificate of registration.
4. Arbitration; appeals.	16. Promulgation of rules and regulations by administrator.
5. Residential contractor's guaranty fund; regulations.	17. Contractors or subcontractors; prohibited acts; violations.
6. Fund administrator; special account.	18. Administrative penalties for violations of chapter provisions.
7. Claims against fund; award limitations.	19. Fines and imprisonment in addition to administrative penalties.
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10. Registration applications; required information.	
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12. Denial of registration applications; grounds; requests for reconsideration.	

142A:1. Definitions.

Section 1. As used in this chapter, the following words shall, unless the context requires otherwise, have the following meanings:—

"Actual loss", amounts payable for the cost of repair, replacement, completion or performance under the terms of a residential contracting agreement with respect to which a claim is made.

"Administrator", the chief administrator of the board of building regulations and standards, an agency within the executive office of public safety, established by section 18 of chapter 6A.

"Claimant", an owner and resident of a residential building, containing at least one but not more than four dwelling units, who has entered into a construction contract with a contractor to carry out construction work on said building, and who is making a claim against said contractor for failure of performance under said contract.

"Contract", a written agreement contained in one or more documents for the performance of certain residential contracting work, including all labor, goods and services set forth under said agreement.

"Contractor", any person who owns or operates a contracting business who, through himself or others, undertakes, offers to undertake, purports to have the capacity to undertake, or submits a bid for, residential contracting work.

"Director", the director of consumer affairs and business regulation.

"Employee", any person employed by and under the direction and control of a contractor or subcontractor and who performs services for wages or salary.	22 23 24
"Fund administrator", the administrator of the Residential Contractor's Guaranty Fund, appointed by the director of consumer affairs and business regulation.	25 26 27
"Fund", the Residential Contractor's Guaranty Fund.	28
"Mortgage broker", any person who, for compensation or gain, or in the expectation of compensation or gain, directly or indirectly negotiates, places, assists in placement, finds or offers to negotiate, place, assist in placement of mortgage loans on residential property for others, or as otherwise defined in chapter two hundred and fifty-five E.	29 30 31 32 33
"Mortgage lender", any person engaged in the business of making mortgage loans, or issuing commitments to fund mortgage loans, or accepting applications or fees associated with the making of mortgage loans which are secured by a mortgage on residential property or, as otherwise defined by said chapter two hundred and fifty-five E.	34 35 36 37 38
"Mortgage loan", a loan to any person made primarily for personal, family, or household purposes, secured wholly or partially by a mortgage on a residential property or, as otherwise defined by said chapter two hundred and fifty-five E.	39 40 41 42
"Owner", any homeowner of a pre-existing owner-occupied building containing at least one but not more than four dwelling units, or tenant thereof, who orders, contracts for, or purchases the services of a contractor or subcontractor.	43 44 45 46
"Person", any individual, partnership, corporation, society, trust, association, or any other legal entity.	47 48
"Registrant", any contractor or subcontractor duly registered under the provisions of this chapter.	49 50
"Residential contracting", the reconstruction, alteration, renovation, repair, modernization, conversion, improvement, removal, or demolition, or the construction of an addition to any pre-existing owner occupied building containing at least one but not more than four dwelling units, which building or portion thereof is used or designed to be used as a residence or dwelling unit, or to structures which are adjacent to such residence or building.	51 52 53 54 55 56 57
"Salesperson", any person, other than a supplier of material or a laborer, who solicits, offers, negotiates, executes, or otherwise endeavors, to procure by any means whatsoever, directly or indirectly, a contract for residential contracting services from an owner on behalf of a contractor or subcontractor.	58 59 60 61 62

"Subcontractor", any person other than a supplier of material or labor, who enters into a contract, written or verbal, with a contractor for the performance of any part of the contractor's contract, or who enters into a contract with any other subcontractor for the performance of any part of the subcontractor's contract, and who does not perform work other than a subcontractor.

142A:2. Residential contracting agreements; requirements.

Section 2. (a) Every agreement to perform residential contracting services in an amount in excess of one thousand dollars shall be in writing and shall include the following documents and information:

(1) the complete agreement between the owner and the contractor and a clear description of any other documents which are or shall be incorporated into said agreement;

(2) the full names, social security numbers, addresses, exclusive of post office box addresses, registration number of the contractor, the names of the salesperson, if any, who solicited or negotiated the contract and the date when said contract was executed by the parties;

(3) the date on which the work under the contract is scheduled to begin and the date on which said work is scheduled to be substantially completed;

(4) a detailed description of the work to be done and the materials to be used in the performance of said contract;

(5) the total amount agreed to be paid for the work to be performed under said contract;

(6) a time schedule of payments to be made under said contract and the amount of each payment stated in dollars, including all finance charges. Any deposit required under the contract to be paid in advance of the commencement of work under said contract shall not exceed the greater of one-third of the total contract price or the actual cost of any materials or equipment of a special order or custom made nature, which must be ordered in advance of the commencement of work, in order to assure that the project will proceed on schedule. No final payment shall be demanded until the contract is completed to the satisfaction of the parties thereto;

(7) the signatures of all parties shall be affixed to the contract;

(8) there shall be a clear and conspicuous notice appearing in the contract:

that all contractors and subcontractors must be registered by the administrator and that any inquiries about a contractor or subcontractor relating to a registration should be directed to the administrator;

of the registration number of the contractor or subcontractor;	34
of an owner's three-day cancellation rights under section forty-eight of chapter ninety-three, section fourteen of chapter two hundred and fifty-five D, or section ten of chapter one hundred and forty D as may be applicable;	35 36 37 38
of all warranties and the owner's rights under the provisions of this act;	39 40
in ten point bold type or larger, directly above the space provided for the signature, "Do not sign this contract if there are any blank spaces";	41 42
of any lien on or security interest on the residence as a consequence of the contract.	43 44
(9) an enumeration of such other matters upon which the owner and the contractor may lawfully agree; provided, however, that no such agreement may waive any rights conveyed to the owner under the provisions of this chapter; and	45 46 47 48
(10) any other provision otherwise required by the applicable laws of the commonwealth.	49 50
No contract shall contain an acceleration clause under which any part or all of the balance not yet due may be declared due and payable because the holder deems himself to be insecure. However, where the contractor deems himself to be insecure he may require as a prerequisite to continuing said work that the balance of funds due under the contract, which are in the possession of the owner, shall be placed in a joint escrow account requiring the signature of the contractor and owner for withdrawal.	51 52 53 54 55 56 57 58
At the time of signing, the owner shall be furnished with a copy of the contract signed by both the contractor and the owner. No work shall begin prior to the signing of the contract and transmittal to the owner of a copy of such contract.	59 60 61 62
Any contract entered into between a contractor and homeowner shall require the contractor to inform the homeowner of the following: (i) any and all necessary permits, (ii) that it shall be the obligation of the contractor to obtain said permits, and (iii) that homeowners who secure their own permits will be excluded from the guaranty fund provisions of this chapter.	63 64 65 66 67 68
Any contract entered into between a contractor and homeowner may provide that the contractor may initiate alternative dispute resolution through any private arbitration services approved by the director, under paragraphs (a) to (e), inclusive, of section four; provided, that said alternative dispute resolution provision is clearly and conspicuously disclosed	69 70 71 72 73

in the contract, in language designated by the director, and that each party separately signs and dates the provision, thereby assenting to the procedure. 74
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Contracts which fail to comply with the requirements of this section shall not be invalid solely because of noncompliance. 77
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142A:3. Civil actions; private arbitration program.

Section 3. (a) Any party may bring an action to enforce any provision of this chapter, or to seek damages subject to the provisions of this chapter, in the superior court, the district court, or the small claims division of the district court. 1
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(b) In the alternative, an owner may request that a dispute resulting from and relating to residential contracting be decided under the terms of a private arbitration program approved by the director. 5
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142A:4. Arbitration; appeals.

Section 4. (a) There shall be a private arbitration services program approved by the director, to consider disputes between owners and registered contractors and subcontractors, concerning or arising from contracts for residential contracting services. No claim may be filed for arbitration after two years from the date of the contract. Such arbitration shall be performed by private arbitration services approved by said director, and shall operate in accordance with the regulations promulgated by the director. Either party may elect to pursue an action in small claims court if the amount of the dispute is within small claims jurisdiction. 1
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(b) All registered contractors and subcontractors who enter into contracts for residential contracting impliedly consent to the provisions contained in this section. 11
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(c) A contractor or subcontractor who is required to submit to arbitration as a result of an owner's application for arbitration may file a counterclaim, based on or arising from the same contract, in that arbitration. 14
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(d) All findings of fact issuing from arbitration shall be taken as prima facie evidence in any subsequent appeal brought by either party ensuing from the matter considered in said arbitration. 18
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(e) A contractor, subcontractor or homeowner may also appeal the decision of an arbitrator for a trial de novo in superior court or district court. Such appeal must be filed within twenty-one days from the issuance of such findings and shall stay any work or payment to the owner, contractor or subcontractor. 21
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142A:5. Residential contractor's guaranty fund; regulations.

Section 5. There shall be established a Residential Contractor's Guaranty Fund within the office of consumer affairs and business regulation, to compensate owners for actual losses incurred by them as a result of registered contractor or subcontractor conduct which has been found by a court of competent jurisdiction to be work performed in a poor or unworkmanlike manner or which is a common law violation or a violation of any statute or regulation designed for the protection of consumers, including but not limited to, prohibited acts listed in section seventeen; provided, however, that the owner has exhausted all customary and reasonable efforts to collect the judgment but the contractor has filed for bankruptcy, fled the jurisdiction or the owner is otherwise unable to collect such judgment after execution. The director shall promulgate such regulations as he may deem necessary to implement the fund under this chapter. Prior to the adoption, amendment or repeal of any regulation, the director shall give notice and hold a public hearing in accordance with the requirements of chapter thirty A. The fund administrator shall be responsible for implementing the provisions of this chapter and such regulations as the director may promulgate as they relate to the fund.

For purposes of recovery against the fund, the conduct of a registered contractor or subcontractor shall be deemed to include the conduct of his employees, salespersons and subcontractors, whether or not an express relationship exists, provided the work or activities of such individuals is within the scope of the contract and not for additional work beyond the contract which such individuals undertake by separate agreement with the owner.

142A:6. Fund administrator; special account.

Section 6. The fund administrator shall operate the fund in accordance with this chapter and maintain the fund at a level which is commensurate with claims anticipated to be made against it. All monies collected shall be deposited to the credit of the fund into a special interest bearing account to be administered by the fund administrator who shall invest or reinvest the money of the fund. No portion of monies in said account shall be used for the administration of the fund, except as required by this paragraph. Interest accruing from investment of money in the fund shall be credited to the fund, with a portion of the interest, the amount of which shall be determined by the fund administrator, to be applied to educating consumers, contractors and others as to the requirements of this chapter.

142A:7. Claims against fund; award limitations.

Section 7. An owner may make a claim to the fund only if he has complied with the provisions of section three of this chapter, and has filed his

claim with the fund within six months after the owner has obtained a judgment or arbitration award, and has exhausted all such customary and reasonable efforts to collect the judgment or award. 3 4 5

A claim under this section shall not be construed to limit the availability of other legal or equitable remedies unless the claim made is for the full amount of the value of the work claimed as damages, in which case the contractor or subcontractor, upon repayment to the fund, may use repayment as a defense via settlement. 6 7 8 9 10

The fund administrator may not award: (1) more than ten thousand dollars or any amount necessary to compensate the owner for his actual loss, whichever is less to any one claimant or; (2) more than seventy-five thousand dollars to claimants on account of the conduct of any one registered contractor or subcontractor within a twelve month period, unless after the fund administrator has paid out said seventy-five thousand dollars the registrant has repaid the fund the full amount; provided, however, that it is within the discretion of the fund administrator to waive the limit with cause; or (3) any amount for consequential damages, except as may be allowed under section four, or for personal injury, punitive damages, attorney's fees, court costs or interest. 11 12 13 14 15 16 17 18 19 20 21

If at any time the money deposited in the fund is insufficient to satisfy any approved claim or portion thereof, the fund administrator, when sufficient money has been deposited in the fund, shall satisfy the unpaid claims or portions thereof in the order that the claims were originally filed with the fund administrator. 22 23 24 25 26

The pendency of a claim against the fund shall not limit the administrator from taking disciplinary action against any registered contractor or subcontractor pursuant to this chapter. 27 28 29

142A:8. Fund payments; subrogation; right to reimbursement with interest.

Section 8. When the fund administrator has paid from the fund any sum to a claimant, the fund administrator shall be subrogated to all the rights of the claimant up to the amount paid, and the claimant shall assign all the claimant's right, title, and interest in the claim up to the amount paid to the claimant by the fund administrator. 1 2 3 4 5

Payment from the fund of any sum to a claimant under this section shall vest in the fund administrator a right to reimbursement to the fund, with interest, any money paid on account of the registered contractor or subcontractor found by the fund administrator to be responsible for the claim. 6 7 8 9 10

If the amount paid from the fund, plus interest at a rate set by the fund administrator, is not repaid by the registered contractor or subcontractor on whose account a claim was paid in full, within thirty days after notice, the attorney general may seek legal proceedings to recover 11 12 13 14

against the registered contractor or subcontractor the amount unpaid. 15
 The fund administrator shall be entitled to a judgment for such amount 16
 upon a showing that: (1) the registrant was afforded notice and an op- 17
 portunity to be heard in legal actions which resulted in the judgment 18
 against the registrant, or in an arbitration proceeding pursuant to section 19
 four, and (2) no appeal is pending, and (3) the fund administrator has di- 20
 rected payment from the fund based on the final judgment of a court of 21
 competent jurisdiction, or an award of an arbitrator pursuant to section 22
 four. 23

The fund shall be deemed a creditor with respect to any amount paid 24
 from the fund for the purpose of excepting to any discharge of the regis- 25
 tered contractor or subcontractor under federal bankruptcy law. 26

142A:9. Registration of contractors or subcontractors.

Section 9. (a) No contractor or subcontractor shall undertake, offer 1
 to undertake, or agree to perform residential contracting services unless 2
 registered therefor with the approval of the bureau of building regula- 3
 tions and standards. 4

(b) It shall be the duty of the administrator to issue and deliver a cer- 5
 tificate of registration to all applicants who have been approved for regis- 6
 tration. 7

(c) In the case of registration by a corporation or partnership, an in- 8
 dividual shall be designated to be responsible for the corporation's or 9
 partnership's work. The corporation or partnership and its designee 10
 shall be jointly and severally liable for: the payment of the registration 11
 fee, the payment to the fund, as required herein, and for violations of any 12
 provisions of this chapter, including actions by the registrant's employ- 13
 ees, subcontractors or salespersons. 14

142A:10. Registration applications; required information.

Section 10. In order to be registered as a contractor or subcontractor, 1
 an applicant shall make a written application under oath to the adminis- 2
 trator on a form provided by him. Said application shall set forth infor- 3
 mation that includes, but shall not be limited to:— 4

(a) applicant's name, home address, business address exclusive of 5
 post office box addresses, and social security number; 6

(b) the names and addresses of any and all owners, partners or trust- 7
 ees of an applicant including, in case of corporate entities, the names and 8
 addresses of any and all officers, directors and principal shareholders, 9
 and copy of a business certificate if a registrant is not incorporated. If 10
 such corporate information is accurately reflected in the articles of orga- 11
 nization or amendments thereto, or a current annual report of condition 12
 or other documents on file with the secretary of state or the Securities 13

and Exchange Commission, a copy of the relevant sections of such filing shall satisfy the application requirements specified herein. If a person is conducting business in the commonwealth under any title other than his real name, individually or as a partnership, a copy of the certificate filed with the clerk of the city or town where an office of such person or partnership may be situated pursuant to section five of chapter one hundred and ten shall satisfy the application requirements specified herein.

(c) whether the applicant has ever been previously registered in the commonwealth as a contractor or subcontractor pursuant to this chapter, under what other names he was previously registered, whether there have been previous judgments or arbitration awards against him, whether there is money owing to the fund on account of such judgments or awards against him, and whether his registration has ever been suspended or revoked.

142A:11. Registration fees.

Section 11. (a) Every contractor or subcontractor as defined in this chapter shall pay a registration fee in an amount equal to the fee paid by construction supervisors pursuant to section ninety-four of chapter one hundred and forty-three. Every individual construction supervisor licensed in accordance with said section ninety-four of chapter one hundred and forty-three and every individual motor vehicle repair shop registered in accordance with section two of chapter one hundred A who is also acting as a contractor as defined in this chapter, shall register pursuant to sections nine and ten, but shall be exempt from said registration fee, upon presentation to the administrator of documentation that the license or registration fee has been paid and that the license or registration is current. Such licensee or registrant shall be required to submit to the administrator such information as the administrator may require under sections nine and ten, and shall be issued a certificate of registration under paragraph (b) of section nine. The registration fee required under this paragraph shall be payable upon application for registration and renewal.

In addition, every contractor and subcontractor as defined in this chapter, shall pay a fee to the fund with his application for registration. The amount of such fee shall be based upon the number of persons in his employ at the time of application. A contractor or subcontractor with fewer than four employees shall pay a fee of one hundred dollars; with four to ten employees, the fee shall be two hundred dollars; with eleven to thirty employees the fee shall be three hundred dollars; with more than thirty employees the fee shall be five hundred dollars. Such payment shall be refunded if the application is denied by the administrator. No contractor or subcontractor shall be required to pay this fee more than once unless the fund administrator determines that the amount of the fund is insufficient to maintain it at a level commensurate with claims

made against said fund. If such a determination is so made, after conducting a public hearing, the administrator, in consultation with the fund administrator, may assess each home improvement contractor or subcontractor an appropriate fee, the amount to be determined by the commissioner of administration and finance which shall not exceed the amount of the original assessment; provided, however, that the administrator shall not assess any registrant more than once in any twelve month period.

Each certificate of registration issued by the administrator shall bear a number which shall be valid for two years from the date of its issuance and may be renewed upon approval by the administrator of an application to be provided by him. Said certificate shall not be transferable.

142A:12. Denial of registration applications; grounds; requests for reconsideration.

Section 12. No application for registration or renewal conforming to the requirements of this chapter may be denied except for a finding by the administrator that the applicant has done one or more of the following acts which are grounds for denial:

(1) made material omissions or misrepresentations of fact on application for registration or renewal under this chapter or on an application for licensure or renewal under section ninety-four I of chapter one hundred and forty-three; or

(2) failed to pay either the registration fee or the payment to the fund required by this chapter; or

(3) failed consistently to perform contracts or has performed said contracts in an unworkmanlike manner or has failed to complete said contracts with no good cause or has engaged in fraud or bad faith with respect to said contracts; or

(4) failed to meet or has violated any of the requirements for registered contractors or subcontractors set forth in this chapter or has performed or is attempting to perform any act prohibited by this chapter.

If a registration is refused, the applicant may, within ten days from the date notice of refusal is mailed, make a request for reconsideration. The administrator must render his decision within a reasonable period of time, but not more than sixty days following the request.

142A:13. Registration records; building permits, contracts and advertisements.

Section 13. (a) The administrator shall keep on file, in convenient form and open to public inspection, all applications for registration and copies of registrations issued and the names of all contractors or subcontractors whose registration has been revoked, suspended or surrendered.

- (b) All building permits shall clearly state that persons contracting with unregistered contractors do not have access to the guaranty fund under this chapter. 5
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- (c) Every contract, building permit and advertisement shall display the contractor's or subcontractor's certificate of registration number. 8
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- (d) Every registered contractor or subcontractor shall notify the administrator within thirty days of any change of trade name or address. 10
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- (e) Upon the expiration, termination or voluntary surrender of a registration, the registrant shall deliver the registration to the administrator who shall cancel the registration and endorse the date of expiration, termination or surrender. 12
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- (f) If a certificate of registration is lost, misplaced or destroyed, the registrant shall file an affidavit to that effect and the administrator for a nominal fee, shall issue a replacement registration, clearly identified as such, both on the certificate of registration and in the records of the administrator. 16
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142A:14. Persons not required to be registered.

Section 14. The following persons are not required to be registered under this chapter: the commonwealth or any of its political subdivisions; any school, public or private, offering as part of a vocational education program courses and training in any aspects of home construction or home improvements; electricians, plumbers, architects or any other persons who are required by law to attain standards of competency or experience as a prerequisite to licensure for and engaging in such profession and who are acting exclusively within the scope of the profession for which they are currently licensed pursuant to such other law, construction supervisors excepted; persons dealing in the sale of goods or materials who neither arrange to perform nor perform directly or indirectly any work or labor in connection with the installation of or application of the goods or materials; persons building their own home or personally doing the renovations; any individual who performs labor or services for a contractor or subcontractor, for wages or salary and who does not act in the capacity of a contractor; any contractor or subcontractor who works on one undertaking or project by one or more contracts where the aggregate contract price is less than five hundred dollars; provided, however, that the contract is not in an amount of less than five hundred dollars for the purpose of evading this chapter; any person who engages in the business of a contractor or subcontractor on other than a full-time basis, and who has earned in gross revenues, as a contractor or subcontractor, less than five thousand dollars in the previous twelve-month period; any person acting as a contractor or subcontractor who was enrolled as a full-time student in a secondary school or college with degree granting authority from the government of the state in which the 1
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school is located, for the immediately preceding academic semester and 27
 is also enrolled as a full-time student for the next academic semester, in 28
 the same or a similar degree granting secondary school or college pro- 29
 vided that at least two-thirds of the number of the employees of the con- 30
 tractor or subcontractor are similarly enrolled in secondary schools or 31
 colleges and that the contractor or subcontractor does not reasonably ex- 32
 pect to earn or does not in fact earn, in gross revenues, more than five 33
 thousand dollars; persons who install central heating, air-conditioning 34
 systems, energy-conservation devices, or provide conservation services 35
 conducted by or on behalf of a public utility under a program approved 36
 by the department of telecommunications and energy; any contractor or 37
 subcontractor who works exclusively in any of the following home im- 38
 provement areas: landscaping; interior painting or wall covering; or fin- 39
 ished floor covering, including but not limited to carpeting, vinyl floor 40
 covering, tile; or fencing or freestanding masonry walls; or above- 41
 ground swimming pools; or shutter or awning installation; or ground 42
 level patios; or asphalt and driveway installation and maintenance. 43

142A:15. Suspension or revocation of certificate of registration.

Section 15. Prior to its expiration date, a certificate of registration 1
 may be suspended or revoked by the administrator, upon recommenda- 2
 tion by the advisory board and in accordance with the procedures and on 3
 the grounds set forth in section eleven, or may be terminated by volun- 4
 tary surrender by the registrant. Further grounds for suspension or re- 5
 vocation are: (a) a violation by a registrant or any agent or employee of 6
 the registrant of any of the provisions of this chapter and (b) the pay- 7
 ment of any amount from the fund because of the conduct of a registered 8
 contractor or subcontractor where said contractor or subcontractor has 9
 not repaid the fund in full, including the appropriate amount of annual in- 10
 terest. 11

142A:16. Promulgation of rules and regulations by administrator.

Section 16. The administrator shall be responsible for the implemen- 1
 tation of the provisions of this chapter and the promulgation of such 2
 rules and regulations as he shall deem necessary to implement the provi- 3
 sions of this chapter. Prior to the adoption, amendment or repeal of any 4
 regulation, the administrator shall give notice and hold a public hearing 5
 in accordance with the requirements of chapter thirty A. 6

142A:17. Contractors or subcontractors; prohibited acts; violations.

Section 17. The following acts are prohibited by contractors or sub- 1
 contractors: 2

- (1) operating without a certificate of registration issued by the admin- 3
 istrator; 4

- (2) abandoning or failing to perform, without justification, any contract or project engaged in or undertaken by a registered contractor or subcontractor, or deviating from or disregarding plans or specifications in any material respect without the consent of the owner; 5
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- (3) failing to credit to the owner any payment they have made to the contractor or his salesperson in connection with a residential contracting transaction; 9
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- (4) making any material misrepresentation in the procurement of a contract or making any false promise of a character likely to influence, persuade or induce the procurement of a contract; 12
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- (5) knowingly contracting beyond the scope of the registration as a contractor or subcontractor; 15
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- (6) acting directly, regardless of the receipt or the expectation of receipt of compensation or gain from the mortgage lender, in connection with a residential contracting transaction by preparing, offering or negotiating or attempting to or agreeing to prepare, arrange, offer or negotiate a mortgage loan on behalf of a mortgage lender; 17
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- (7) acting as a mortgage broker or agent for any mortgage lender; 22
- (8) publishing, directly or indirectly, any advertisement relating to home construction or home improvements which does not contain the contractor's or subcontractor's certificate of registration number or which does contain an assertion, representation or statement of fact which is false, deceptive, or misleading; 23
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- (9) advertising in any manner that a registrant is registered under this chapter unless the advertisement includes an accurate reference to the contractor's or subcontractor's certificate of registration; 28
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- (10) violation of the building laws of the commonwealth or of any political subdivision thereof; 31
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- (11) misrepresenting a material fact by an applicant in obtaining a certificate of registration; 33
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- (12) failing to notify the administrator of any change of trade name or address as required by section thirteen; 35
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- (13) conducting a residential contracting business in any name other than the one in which the contractor or subcontractor is registered; 37
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- (14) failing to pay for materials or services rendered in connection with his operating as a contractor or subcontractor where he has received sufficient funds as payment for the particular construction work, project or operation for which the services or materials were rendered or purchased; 39
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(15) failing to comply with any order, demand or requirement lawfully made by the administrator or fund administrator under and within the authority of this chapter; 44 45 46

(16) demanding or receiving payment in violation of clause (6) of paragraph (a) of section two; 47 48

(17) violating any other provision of this chapter. 49

Violations of this section shall subject the violator to the administrative sanctions of section eighteen and to criminal prosecution as prescribed in section nineteen. 50 51 52

Violations of any of the provisions of this chapter shall constitute an unfair or deceptive act under the provisions of chapter ninety-three A. 53 54

142A:18. Administrative penalties for violations of chapter provisions.

Section 18. If the administrator determines that any registrant is liable for a violation of any of the provisions of this chapter, the administrator may suspend the registrant's certificate of registration for such period of time as shall be determined by the administrator, revoke the registrant's certificate of registration, or reprimand the registrant. 1 2 3 4 5

The administrator may assess an administrative penalty not to exceed two thousand dollars, payable within thirty days of his order, for each violation of any provision of this chapter committed by contractors or subcontractors who are registered or who are required to be registered under this chapter. This penalty shall be deposited in the fund. 6 7 8 9 10

In determining whether to impose an administrative penalty, the administrator shall consider the seriousness of the violation, the deleterious effect of the violation on the complainant, any good faith on the part of the contractor or subcontractor, and the contractor's or subcontractor's history of previous violations. 11 12 13 14 15

142A:19. Fines and imprisonment in addition to administrative penalties.

Section 19. Any contractor or subcontractor who shall knowingly, willfully, or negligently operate without obtaining a certificate of registration as required by this chapter and who is not otherwise exempt from the registration requirement or any contractor or subcontractor who continues to operate after revocation of or during suspension of, or who fails to renew his certificate of registration, shall be punished by a fine not exceeding five thousand dollars or imprisonment not exceeding two years, or both. 1 2 3 4 5 6 7 8

Any person who knowingly and willfully violates any of the provisions of this chapter, with respect to which a greater penalty is not otherwise provided by the provisions of this chapter or by any other law may be 9 10 11

punished by a fine of not more than two thousand dollars or by imprisonment for not more than one year or both. 12
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Such fines and imprisonment shall be in addition to any administrative penalty otherwise applicable thereto and may be sought in an action brought by the attorney general or the district attorney. 14
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142A:20. Continuing violations; injunctions; restitution.

Section 20. If the administrator concludes that the continuing conduct of any person alleged to be in violation of this chapter may result in substantial or irreparable harm to any citizen of the commonwealth, he may seek: 1
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(a) A permanent or temporary injunction with respect to the conduct from the superior court of any county in which the alleged violation is occurring, or in which the violator has its principal place of business; or 5
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(b) Restitution or an order requiring satisfactory completion of the contractor's contract. 8
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(c) The administrator shall not be required to file a bond or to show a lack of an adequate remedy at law when seeking an injunction under this section against any person, association, partnership, or corporation not registered under this chapter. 10
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142A:21. Liability of registered persons and commonwealth.

Section 21. This chapter shall not be construed to relieve or lessen the responsibility of any person registered under this chapter or licensed under section ninety-four of chapter one hundred and forty-three, nor shall the commonwealth be deemed to have assumed any such liability by reason of the issuance of registration or licensure. 1
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